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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,463	08/29/2001	Nikos Panayotatos	NP/1 CIP DIV	9750
1473	7590	05/24/2004	EXAMINER	
FISH & NEAVE 1251 AVENUE OF THE AMERICAS 50TH FLOOR NEW YORK, NY 10020-1105			AZPURU, CARLOS A	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

09/942,463

**Applicant(s)**

PANAYOTATOS, NIKOS

**Examiner**

Carlos A. Azpuru

**Art Unit**

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-35 is/are pending in the application.
- 4a) Of the above claim(s) 23-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 0420/04.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Receipt is acknowledged of the faxed response filed 04/23/04. Applicant was called in order to expedite the prosecution on this case, and the examiner is grateful for receipt of the faxed response so that another non responsive mailing could be avoided.

### ***Election/Restrictions***

Applicant's election with traverse of Group II, claims 29-35 in Paper No. 04232004 is acknowledged. The traversal is on the ground(s) that each of the groups has a common point of novelty, and does not present an undue burden on this office in terms of a search. This is not found persuasive because while some areas may be coextensive, a full search of each group requires addition areas which are not. For example, the purification method would also require searches not required in the other methods.

The requirement is still deemed proper and is therefore made FINAL.

Claims 23-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 04232004.

***Claim Rejections - 35 USC § 112***

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 30 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a surface protein, does not reasonably provide enablement for any molecule. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The specification appears to indicate that the targeted molecule is a protein, and further is usually part of a fusion protein. The Markush Group should further indicate that the target selected is on the surface of microorganism, cell, tissue or organ. Clarification and correction are requested.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29-35 are indefinite in that they do not particularly point out how the complex is administered. Clarification is requested.

Claim 30 is indefinite in that the terms "molecule", and "other microorganism and another surface that is capable of binding specifically to said complex" fails to particularly point out the metes and bounds of the Markush Group. Correction is requested.

Claims 33, 34 and 35 recite the limitation "said protein" in claim 32. There is insufficient antecedent basis for this limitation in the claim. Since claim 32 more specifically recites a "cell surface antigen", both claims should specifically refer to this type of protein or be amended to depend upon claim 31 instead.

Goldenberg is cited for its disclosure of tumor therapy using labeled antibodies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**CARLOS A. AZPURU**  
**PRIMARY EXAMINER**  
**GROUP 1500**